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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

MICHELLE S. MICHAEL  
5540 Janine Way  
Corning CA 96021

Respiratory Care Practitioner License No. 20231

Respondent.

Case No. R-2114

**FIRST AMENDED  
A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about August 14, 1998, the Respiratory Care Board issued Respiratory Care Practitioner License Number 20231 to Michelle S. Michael (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on February 29, 2008, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code (“the Code”) unless otherwise indicated.

2           4.       Section 3710 of the Code states: “The Respiratory Care Board of  
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter  
4 8.3, the Respiratory Care Practice Act].”

5           5.       Section 3718 of the Code states: “The board shall issue, deny, suspend,  
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7           6.       Section 3750 of the Code states:

8           “The board may order the denial, suspension or revocation of, or the imposition of  
9 probationary conditions upon, a license issued under this chapter, for any of the following  
10 causes:

11           “(f) Negligence in his or her practice as a respiratory care practitioner”;

12           “(g) Conviction of a violation of any of the provisions of this chapter or of any  
13 provision of Division 2 (commencing with Section 500), or violating, or attempting to  
14 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to  
15 violate any provision or term of this chapter or of any provision of Division 2  
16 (commencing with Section 500).”

17           “(j) The commission of any fraudulent, dishonest, or corrupt act which is  
18 substantially related to the qualifications, functions, or duties of a respiratory care  
19 practitioner.”

20           7.       Section 3755 of the Code states:

21           “The board may take action against any respiratory care practitioner who is  
22 charged with unprofessional conduct in administering, or attempting to administer, direct  
23 or indirect respiratory care. Unprofessional conduct includes, but is not limited to,  
24 repeated acts of clearly administering directly or indirectly inappropriate or unsafe  
25 respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or  
26 monitoring techniques, and violation of any provision of Section 3750. The board may  
27 determine unprofessional conduct involving any and all aspects of respiratory care  
28 performed by anyone licensed as a respiratory care practitioner.”

1           8.       California Code of Regulations, title 16, section 1399.370, states:

2           “For the purposes of denial, suspension, or revocation of a license, a crime or act  
3 shall be considered to be substantially related to the qualifications, functions or duties of  
4 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
5 perform the functions authorized by his or her license or in a manner inconsistent with the  
6 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
7 those involving the following:

8           “(a) Violating or attempting to violate, directly or indirectly, or assisting or  
9 abetting the violation of or conspiring to violate any provision or term of the Act.

10                               COST RECOVERY

11           9.       Section 3753.5, subdivision (a) of the Code states:

12           “In any order issued in resolution of a disciplinary proceeding before the board,  
13 the board or the administrative law judge may direct any practitioner or applicant found to have  
14 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
15 investigation and prosecution of the case.”

16           10.      Section 3753.7 of the Code states:

17           “For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
18 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
19 administrative, filing, and service fees.”

20           11.      Section 3753.1 of the Code states:

21           “(a) An administrative disciplinary decision imposing terms of probation may  
22 include, among other things, a requirement that the licensee-probationer pay the monetary costs  
23 associated with monitoring the probation. ”

24                               FACTS

25           12.      Respondent was employed as a respiratory therapist at Enloe Medical  
26 Center in Chico, California. Enloe Medical Center requires use of the PYXIS system, a portable  
27 medication dispensing unit, to obtain medications for patients. Hospital staff members, including  
28 respiratory therapists, are required to enter an identification code and password to obtain

1 medication. Enloe Medical Center's policy requires that respiratory therapists obtain patient  
2 medication from PYXIS. Enloe Medical Center also uses a Medication Administration Record  
3 (MAR) to track medications. The MAR is a daily printout form from the pharmacy listing all  
4 physician-ordered medications for a 24-hour period. The respiratory therapist is required to  
5 initial the MAR form to verify the medication was delivered, and also chart the therapy.  
6 Accurate billing is obtained with correlation of the PYXIS count, charting, and respiratory  
7 therapist billing.

#### 8 FIRST CAUSE FOR DISCIPLINE

9 (Negligence; Dishonest Act; Unprofessional Conduct)

10 13. Respondent is subject to disciplinary action under sections 3750(f)  
11 [negligence], 3750(j) [dishonest act] and 3755 [unprofessional conduct] in that she failed to  
12 provide a physician-ordered treatment, charted that she provided respiratory treatment when she  
13 did not do so, and failed to follow hospital policy in obtaining medication. The circumstances are  
14 as follows:

15 14. On or about December 6, 2006 at 1325 hours, Patient P.B.'s<sup>1</sup> physician  
16 ordered "Neb Med q4wa" (a nebulizer treatment every four hours while awake), "CPT Q 4 ATC"  
17 (chest percussive treatment every four hours around the clock), and "BiPAP prn distress" (BiPAP  
18 treatment as needed to relieve distress.)

19 A. At 0110 hours, Respondent applied an in-line nebulizer treatment to  
20 Patient P.B., and charted that she administered the treatment. There is no record that she  
21 obtained medication from PYXIS and she did not initial the MAR. She did not perform CPT at  
22 that time, but charted that she did so. Respondent submitted billing for BIPAP and nebulizer  
23 medication.

24 B. At 0422 hours, Respondent charted that she performed a nebulizer  
25 treatment and CPT for Patient P.B.. There is no documentation that respondent obtained the  
26 medication from PYXIS, and she did not initial the MAR. The patient's nurse, T.B., was present  
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28 1. Initials are used to protect confidentiality. Full names will be provided in discovery.

1 in the room at the time, and observed that respondent did not administer the ordered nebulizer  
2 treatment, nor did respondent perform CPT.

3 SECOND CAUSE FOR DISCIPLINE

4 ( Unprofessional conduct)

5 15. Paragraphs 12 through 14 are incorporated herein.

6 16. Respondent is subject to disciplinary action under section 3755  
7 [unprofessional conduct] in that she violated hospital policy for obtaining medication. The  
8 circumstances are as follows:

9 17. Patient W.H. had doctors orders for nebulizer treatment every four hours.  
10 On December 8, 2006, at 2040 hours, respondent charted that she provided the treatment, but  
11 there is no documentation that she removed the medication from PYXIS. Respondent submitted  
12 billing for the treatment. On December 8, 2006, at 0447 hours, respondent charted that she  
13 provided the treatment, but there is no documentation that she removed the medication from  
14 PYXIS. She submitted billing for the treatment.

15 18. Patient N.D. had doctors orders for nebulizer treatment four times a day.  
16 On December 8, 2006, at 0627 hours, respondent charted that she delivered therapy but there is  
17 no supporting PYXIS documentation. She submitted billing for the treatment.

18 19. On December 6, 2006, doctors orders were written for Patient D.H. for  
19 nebulizer treatment four times a day. On December 7, 2006 at 2115 hours, respondent charted  
20 that she provided the treatment but there is no documentation that she removed the medication  
21 from PYXIS. She submitted billing for the treatment.

22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
24 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

25 1. Revoking or suspending Respiratory Care Practitioner License Number  
26 20231, issued to Michelle S. Michael.

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1                   2.       Ordering Michelle S. Michael to pay the Respiratory Care Board the costs  
2 of the investigation and enforcement of this case, and if placed on probation, the costs of  
3 probation monitoring;

4                   3.       Taking such other and further action as deemed necessary and proper.

5 DATED: December 18, 2007

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8                                   Original signed by Liane Zimmerman for:  
9                                   STEPHANIE NUNEZ  
10                                  Executive Officer  
11                                  Respiratory Care Board of California  
12                                  Department of Consumer Affairs  
13                                  State of California  
14                                  Complainant

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